

STATE: MINNESOTA

Effective: January 1, 2002

TN: 02-08

Approved: DEC 9 8 2002

Supersedes: 01-09 (00-22/99-10/99-04/98-22/97-20/97-11) ,

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written notification.

SECTION 18.000 APPEAL PROCEDURES

SECTION 18.010 Scope. A provider may appeal from a determination of a payment rate established pursuant to this attachment and reimbursement rules of the Department if the appeal, if successful, would result in a change to the provider's payment rate or to the calculation of maximum charges to therapy vendors under Section ~~20.030~~ 21.030. Appeals must be filed in accordance with procedures in this section.

SECTION 18.020 Filing an appeal. To appeal, the provider will file with the Department a written notice of appeal; the appeal must be postmarked or received by the Commissioner within 60 days of the date the determination of the payment rate was mailed or personally received by a provider, whichever is earlier. The notice of appeal must specify each disputed item; the reason for the dispute; the total dollar amount in dispute for each separate disallowance, allocation, or adjustment of each cost item or part of a cost item; the computation that the provider believes is correct; the authority in statute or rule upon which the provider relies for each disputed item; the name and address of the person or firm with whom contacts may be made regarding the appeal; and other information required by the Commissioner.

SECTION 18.030 Contested case procedures appeals review process. Effective August 1, 1997, the following apply.

A. Effective for desk audit appeals for rate years beginning on or after July 1, 1997, and for field audit appeals filed on or after that date, the Commissioner shall review appeals and issue a written appeal determination on each appeals item within one year of the due date of the appeal. Upon mutual agreement, the Commissioner and the provider may extend the time for issuing a determination for a specified period. The Commissioner shall notify the provider by first class mail of the appeal determination. The appeal determination takes effect 30 days following the date of issuance specified in the determination.

B. In reviewing the appeal, the Commissioner may request additional written or oral information from the provider. The provider has the right to present information by telephone, in writing, or in person concerning the appeal to the Commissioner prior to the issuance of the appeal determination within six months of the date the appeal was received by the Commissioner. Written requests for conferences must be submitted separately from the

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appeal letter. Statements made during the review process are not admissible in a contested case hearing absent an express stipulation by the parties to the contested case.

C. For an appeal item on which the provider disagrees with the appeal determination, the provider may file with the Commissioner a written demand for a contested case hearing to determine the proper resolution of specified appeal items. The demand must be postmarked or received by the Commissioner within 30 days of the date of issuance specified in the determination. A contested case demand for an appeal item nullifies the written appeal determination issued by the Commissioner for that appeal item. The Commissioner shall refer any contested case demand to the Office of the Attorney General.

D. A contested case hearing must be heard by an administrative law judge. In any proceeding under this section, the appealing party must demonstrate by a preponderance of the evidence that the determination of a payment rate is incorrect.

E. Regardless of any rate appeal, the rate established must be the rate paid and must remain in effect until final resolution of the appeal or subsequent desk or field audit adjustment.

F. The Commissioner has discretion to issue to the provider a proposed resolution for specified appeal items upon a request from the provider filed separately from the notice of appeal. The proposed resolution is final upon written acceptance by the provider within 30 days of the date the proposed resolution was mailed to or personally received by the provider, whichever is earlier.

G. Effective August 1, 1997, the Commissioner may use the procedures described in this section to resolve appeals filed before July 1, 1997.

SECTION 18.040 Attorney's fees and costs.

A. For an issue appealed under Section 18.010, the prevailing party in a contested case proceeding or, if appealed, in subsequent judicial review, must be awarded reasonable attorney's fees and costs incurred in litigating the appeal, if the prevailing party shows that the position of the opposing party was not substantially justified. The procedures for awarding fees and costs set forth in state law regarding procedures for award of fees in contested cases must be followed in determining the prevailing party's fees and costs except as otherwise provided in this section. For purposes of this section, "costs" means subpoena fees and mileage, transcript costs, court reporter fees, witness fees, postage and delivery costs,

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photocopying and printing costs, amounts charged the Commissioner by the office of administrative hearings, and direct administrative costs of the Department; and "substantially justified" means that a position had a reasonable basis in law and fact, based on the totality of the circumstances prior to and during the contested case proceeding and subsequent review.

B. When an award is made to the Department under this section, attorney fees must be calculated at the cost to the Department. When an award is made to a provider under this section, attorney fees must be calculated at the rate charged to the provider except that attorney fees awarded must be the lesser of the attorney's normal hourly fee or \$100 per hour.

C. In contested case proceedings involving more than one issue, the administrative law judge shall determine what portion of each party's attorney fees and costs is related to the issue or issues on which it prevailed and for which it is entitled to an award. In making that determination, the administrative law judge shall consider the amount of time spent on each issue, the precedential value of the issue, the complexity, of the issue, and other factors deemed appropriate by the administrative law judge.

D. When the Department prevails on an issue involving more than one provider, the administrative law judge shall allocate the total amount of any award for attorney fees and costs among the providers. In determining the allocation, the administrative law judge shall consider each provider's monetary interest in the issue and other factors deemed appropriate by the administrative law judge.

E. Attorney fees and costs awarded to the Department for proceedings under this section must not be reported or treated as allowable costs on the provider's cost report.

F. Fees and costs awarded to a provider for proceedings under this section must be reimbursed to them within 120 days of the final decision on the award of attorney fees and costs.

G. If the provider fails to pay the awarded attorney fees and costs within 120 days of the final decision on the award of attorney fees and costs, the Department may collect the amount due through any method available to it for the collection of medical assistance overpayments to providers. Interest charges must be assessed on balances outstanding after 120 days of the final decision on the award of attorney fees and costs. The annual interest rate charged must be the rate charged by the Commissioner of revenue for late payment of taxes that is in effect on the 121st day after the final decision on the award of attorney fees and costs.

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H. Amounts collected by the Commissioner pursuant to this section must be deemed to be recoveries.

I. This section applies to all contested case proceedings set on for hearing by the Commissioner on or after April 29, 1988, regardless of the date the appeal was filed.

SECTION 18.050 Legal and related expenses. Legal and related expenses for unresolved challenges to decisions by governmental agencies shall be separately identified and explained on the provider's cost report for each year in which the expenses are incurred. When the challenge is resolved in favor of the governmental agency, the provider shall notify the Department of the extent to which its challenge was unsuccessful or the cost report filed for the reporting year in which the challenge was resolved. In addition the provider shall inform the Department of the years in which it claimed legal and related expenses and the amount of the expenses claimed in each year relating to the unsuccessful challenge. The Department shall reduce the provider's medical assistance rate in the subsequent rate year by the total amount claimed by the provider for legal and related expenses incurred in an unsuccessful challenge to a decision by a governmental agency.

SECTION 19.000 SPECIAL EXCEPTIONS TO THE PAYMENT RATE

Section 19.010 Swing beds. Medical assistance must not be used to pay the costs of nursing care provided to a patient in a swing bed unless:

A. The facility in which the swing bed is located is eligible as a sole community provider, as defined in 42 CFR §412.92, or the facility is a public hospital owned by a governmental entity with 15 or fewer licensed acute-care beds.

B. Nursing facility care has been recommended for the person by a long-term care consultation team.

C. The person no longer requires acute-care services.

D. No nursing facility beds are available within 25 miles of the facility.

E. Medical assistance also covers up to ten days of nursing care provided to a patient in a swing bed if: (1) the patient's physician certifies that the patient has a terminal illness or condition that is likely to result in death within 30 days and that moving the patient would not


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be in the best interest of the patient and patient's family; (2) no open nursing home beds are available within 25 miles of the facility; and (3) no open beds are available in any Medicare hospice program within 50 miles of the facility.

The daily medical assistance payment rate for nursing care for a person in a swing bed is the statewide average medical assistance skilled nursing care per diem as computed annually on July 1 of each year.

SECTION 19.020 Contracts for services for ventilator- dependent persons. A nursing facility may receive a negotiated payment rate to provide services to a ventilator-dependent person if:

A. Nursing facility care has been recommended for the person by a long-term care consultation team.

B. The person has been hospitalized and no longer requires inpatient acute care hospital services.

C. Necessary services for the person cannot be provided under existing nursing facility rates.

A negotiated adjustment to the operating cost payment rate for a nursing facility must reflect only the additional cost of meeting the specialized care needs of a ventilator-dependent person. For persons who are initially admitted to a nursing facility before July 1, 2001, and have their payment rate negotiated after July 1, 2001, the negotiated payment rate must not exceed 200 percent of the highest multiple bedroom rate for a case mix classification K. For persons initially admitted to a facility on or after July 1, 2001, the negotiated payment rate must not exceed 300 percent of the highest multiple bedroom rate for a case mix classification K at that facility.

SECTION 19.025 Special payment rates for short-stay nursing facilities. For the rate year beginning on or after July 1, 1993, a nursing facility whose average length of stay for the preceding reporting years is (1) less than 180 days; or (2) less than 225 days in a nursing facility with more than 315 licensed beds must be reimbursed for allowable costs up to 125 percent of the total care-related limit and 105 percent of the other-operating-cost limit for hospital-attached nursing facilities. A nursing facility that received the benefit of this limit during the rate year beginning July 1, 1992, continues to receive this rate during the rate year beginning July 1, 1993 even if the nursing facility's length of stay is more than 180 days in the rate years subsequent to the rate year beginning July 1, 1991. For purposes of this section a

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nursing facility shall compute its average length of stay by dividing the nursing facility's actual resident days for the reporting year by the nursing facility's total resident discharges for that reporting year.

SECTION 19.026 Interim closure payments for nursing facilities designated for closure under an approved closure plan and special rate adjustments for nursing facilities remaining open under an approved closure plan. Instead of payments pursuant to Sections 1.000 to 20.000 or pursuant to the prospective rate-setting methodology in Section 21.000, the Department may approve a closure plan or a phased plan, permitting certain nursing facilities to receive interim closure payments or special rate adjustments.

A. For the purposes of this section, the following have the meanings given.

(1) "Closure plan" means a system to close one or more nursing facilities and reallocate the resulting savings to provide special rate adjustments at other nursing facilities. A closure plan may be submitted by nursing facilities that are owned or operated by a nonprofit corporation owning or operating more than 22 nursing facilities. Approval of a closure plan expires 18 months after approval, unless commencement of closure has occurred at all nursing facilities designated for closure under the plan.

(2) "Commencement of closure" means the date the Department of Health is notified of a planned closure, as part of an approved closure plan.

(3) "Completion of closure" means the date the final resident of a facility designated for closure in a closure plan is discharged.

(4) "Interim closure payments" means the medical assistance payments that may be made to a nursing facility designated for closure in an approved closure plan.

(5) "Phased plan" means a closure plan affecting more than one nursing facility undergoing closure that is commenced and completed in phases.

(6) "Special rate adjustment" means an increase in a nursing facility's operating rates. The special rate adjustment for each facility will be allocated proportionately to the various rate per diems included in that facility's operating rate.

B. The Department will not approve a closure plan or a phased plan unless it determines that projected state savings equal or exceed projected state and county government

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costs, including facility costs during the closure period, the estimated costs of special rate adjustments, estimated resident relocation costs, the cost of services to relocated residents, and state agency administrative costs relative to the plan. To achieve cost neutrality, costs may only be offset against savings that occur within the same state fiscal year. For purposes of a phased plan, the requirement that costs must not exceed savings applies to both the aggregate costs and savings of the plan and to each phase of the plan.

C. Interim closure payments. To pay interim closure payments, the Department will:

- (1) Apply the interim and settle-up rate provisions of Section 12.000 to include facilities covered under this section, effective from commencement of closure to completion of closure;
- (2) Notwithstanding Section 15.140, item B, extend the length of the interim period, but no longer than 12 months;
- (3) Limit the amount of payable expenses related to the acquisition of new capital assets;
- (4) Prohibit the acquisition of additional capital debt or refinancing of existing capital debt unless prior approval is obtained from the Department;
- (5) Establish as the aggregate administrative operating cost limitation for the interim period the actual aggregate administrative operating costs for the period immediately before commencement of closure that is of the same duration as the interim period;
- (6) Require the retention of financial and statistical records until it has audited the interim period and the settle-up rate;
- (7) Make aggregate payments under this section for the interim period up to the level of the aggregate payments for the period immediately before to commencement of closure that is of the same duration as the interim period; and
- (8) Change any other provision to which all parties to the plan agree.

D. As part of a phased plan, a nursing facility may receive a special rate adjustment

The special rate adjustment may be received under more than one phase of the closure plan, and the cost savings from the closure of the nursing facility designated for closure may be applied as an offset to the subsequent costs of more than one phase of the plan. If a facility is proposed to receive a special rate adjustment or provide cost savings under more than one phase of the plan, the proposal must describe the special rate adjustments or cost savings in each phase of the plan.

(1) The special rate adjustment is effective no earlier than the first day of the month following completion of closure of all nursing facilities designated for closure under the closure plan.

(2) For purposes of a phased plan, the special rate adjustment for each phase is effective no earlier than the first day of the month following completion of closure of all nursing facilities designated for closure in that phase of the plan.

SECTION 19.027 Planned closure rate adjustments under an approved closure plan.

Between August 1, 2001, and June 30, 2003, the Department may approve planned closures of up to 5,140 nursing facility beds, less the number of licensed beds in facilities that close during the same period without approved closure plans or that have notified the Minnesota Department of Health of their intent to close without an approved closure plan.

A. For the purposes of this section, the following have the meanings given.

(1) "Closure" means the cessation of operations of a facility and delicensure and decertification of all beds within the facility.

(2) "Closure plan" means a plan to close a facility and reallocate a portion of the resulting savings to provide planned closure rate adjustments at other facilities. A closure plan is submitted to the Department by a facility. Approval of a closure plan expires 18 months after approval, unless commencement of closure has begun.

(3) "Commencement of closure" means the date on which residents and designated representatives are notified of a planned closure as part of an approved closure plan.

(4) "Completion of closure" means the date on which the final resident of a facility designated for closure in an approved closure plan is discharged.

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(5) "Partial closure" means the delicensure and decertification of a portion of the beds within the facility.

B. Closure rate adjustment calculation. The Department will calculate the planned closure rate adjustment according to the following:

(1) the amount available is the net reduction of nursing facility beds multiplied by \$2,080;

(2) the total number of beds in the facility or facilities receiving the planned closure rate adjustment are identified;

(3) capacity days are determined by multiplying the number determined under clause (2) by 365; and

(4) the planned closure rate adjustment is the amount available in clause (1), divided by capacity days determined under clause (3).

C. A planned closure rate adjustment is effective on the first day of the month following completion of closure of a facility designated for closure in the application and becomes part of the facility's total operating payment rate.

D. A facility or facilities paid pursuant to this Attachment with a closure plan may assign a closure rate adjustment to another facility or facilities that are not closing or, in the case of partial closure, to the facility undertaking the partial closure. A facility may also elect to have a closure rate adjustment shared equally by the five nursing facilities with the lowest total operating payment rates in the state development region in which the facility that is closing is located.

E. Applicants may use the planned closure rate adjustment to allow for:

(1) a property payment for a new facility;

(2) an addition to an existing facility; or

(3) as an operating payment rate adjustment.

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F. A facility receiving a planned closure rate adjustment is eligible for any other rate adjustments under this Attachment.

G. Upon the request of a facility, the Department may delay the implementation of a closure rate adjustment to offset the cost of a non-Medicaid related facility closure rate adjustment approved by the Department pursuant to Minnesota Department of Health laws. This non-Medicaid related facility closure rate adjustment is a 50 percent rate increase to pay relocation costs or other costs related to facility closure.

SECTION 19.030 Facility serving exclusively the physically handicapped. Nursing facilities that serve physically handicapped individuals and which have an average length of stay of less than one year are limited to 140% of the other-operating-cost limit for hospital attached nursing facilities. Other facilities serving physically handicapped individuals but whose average length of stay is not less than one year have a limit of 105 percent of the appropriate hospital attached limit.

SECTION 19.035 Hospital-attached nursing facilities. A hospital-attached nursing facility shall use the same cost allocation principles and methods used in the reports filed for the Medicare program.

A hospital-attached nursing facility is a facility which meets the criteria in items A, B, or C.

A. A nursing facility recognized by the Medicare Program to be a hospital-based nursing facility for purposes of being subject to higher cost limits accorded hospital-attached nursing facilities under the Medicare Program is a hospital-attached nursing facility.

B. A nursing facility which, prior to June 30, 1983, was classified as a hospital-attached nursing facility under Minnesota Rules, and which has applied for hospital-based nursing facility status under the Medicare program during the reporting year or the nine-month period following the nursing facility's reporting year, is considered a hospital-attached nursing facility for the rate year following the reporting year or the nine-month period in which the facility made its Medicare application.

(1) The nursing facility must file its cost report or an amended cost report for that reporting year before the following rate year using Medicare principles and Medicare's recommended cost allocation methods had the Medicare Program's hospital-based nursing facility status been granted to the nursing facility.

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(2) If the nursing facility is denied hospital-based nursing facility status under the Medicare Program, the nursing facility's payment rates for the rate years the nursing facility was considered to be a hospital-attached nursing facility pursuant to this paragraph shall be recalculated treating the nursing facility as a non-hospital-attached nursing facility.

C. The surviving nursing facility of a nonprofit or community operated hospital-attached nursing facility which suspended operation of the hospital is considered, at the option of the facility, a hospital-attached nursing facility for five subsequent rate years. In the fourth year the facility will receive 60 percent of the difference between the hospital-attached limit and the freestanding nursing facility limit, and in the fifth year the facility will receive 30 percent of the difference.

D. For rate years beginning on or after July 1, 1995, a nursing facility is considered a hospital-attached nursing facility for purposes of setting payment rates under this attachment if it meets the above requirements, and: (1) the hospital and nursing facility are physically attached or connected by a tunnel or skyway; or (2) the nursing facility was recognized by the Medicare Program as hospital attached as of January 1, 1995 and this status has been maintained continuously.

SECTION 19.040 Receivership.

A. The Department in consultation with the Department of Health may establish a receivership fee that exceeds a nursing facility payment rate when the Commissioner of Health or the Commissioner of Human Services determines a nursing facility is subject to the receivership provisions. In establishing the receivership fee payment, the Commissioner must reduce the receiver's requested receivership fee by amounts that the Commissioner determines are included in the nursing facility's payment rate and that can be used to cover part or all of the receivership fee. Amounts that can be used to reduce the receivership fee shall be determined by reallocating facility staff or costs that were formerly paid by the nursing facility before the receivership and are no longer required to be paid. The amounts may include any efficiency incentive, allowance, and other amounts not specifically required to be paid for expenditures of the nursing facility. If the receivership fee cannot be covered by amounts in the nursing facility's payment rate, a receivership fee payment shall be set according to subitems (1) and (2) and payment shall be according to subitems (3) through (5).

(1) The receivership fee per diem is determined by dividing the annual receivership fee by the nursing facility's resident days from the most recent cost report for which the Department has established a payment rate or the estimated resident days in the

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projected receivership fee period.

(2) The receivership fee per diem shall be added to the nursing facility's payment rate.

(3) Notification of the payment rate increase must meet the requirements for the notice to private paying residents.

(4) The payment rate in item C for a nursing facility shall be effective the first day of the month following the receiver's compliance with the notice conditions.

(5) The Department may elect to make a lump sum payment of a portion of the receivership fee to the receiver or managing agent. In this case, the Department and the receiver or the managing agent shall agree to a repayment plan.

B. Upon receiving a recommendation from the Commissioner of Health for a review of rates, the Commissioner shall grant an adjustment to the nursing facility's payment rate. The Commissioner shall review the recommendation of the Commissioner of Health, together with the nursing facility's cost report to determine whether or not the deficiency or need can be corrected or met by reallocating nursing facility staff, costs, revenues, or other resources including any investments, efficiency incentives, or allowances. If the Commissioner determines that the deficiency cannot be corrected or the need cannot be met, the Commissioner shall determine the payment rate adjustment by dividing the additional annual costs established during the Commissioner's review by the nursing facility's actual resident days from the most recent desk-audited cost report.

C. If the Department has established a receivership fee per diem for a nursing facility in receivership under item A or a payment rate adjustment under item B, the Department must deduct these receivership payments according to subitems (1) to (3).

(1) The total receivership fee payments shall be the receivership per diem plus the payment rate adjustment multiplied by the number of resident days for the period of the receivership. If actual resident days for the receivership period are not made available within two weeks of the Department's written request, the Department shall compute the resident days by prorating the facility's resident days based on the number of calendar days from each portion of the nursing facility's reporting years covered by the receivership period.

(2) The amount determined in item A must be divided by the nursing facility's resident days for the reporting year in which the receivership period ends.

(3) The per diem amount in item B shall be subtracted from the nursing facility's operating cost payment rate for the rate year following the reporting year in which the receivership period ends. This provision applies whether or not there is a sale or transfer of the nursing facility, unless the provision of item G apply.

D. The Commissioner of Health may request the Commissioner to reestablish the receivership fee payment when the original terms of the receivership fee payment have significantly changed with regard to the cost or duration of the receivership agreement. The Commissioner, in consultation with the Commissioner of Health, may reestablish the receivership fee payment when the Commissioner determines the cost or duration of the receivership agreement has significantly changed. The provisions of developing a receivership fee payment apply to the reestablishment process.

E. The Commissioner of Health shall recommend to the Commissioner a review of the rates for a nursing home or boarding care home that participates in the Medical Assistance Program that is in voluntary or involuntary receivership, and that has needs or deficiencies documented by the Department of Health. If the Commissioner of Health determines that a review of the rate is needed, the Commissioner shall provide the Commissioner of Human Services with: (1) a copy of the order or determination that cites the deficiency or need; and (2) the Commissioner's recommendation for additional staff and additional annual hours by type or employee and additional consultants, services, supplies, equipment, or repairs necessary to satisfy the need or deficiency.

F. Downsizing and Closing nursing facilities. If the nursing facility is subject to a downsizing to closure process during the period of receivership, the Commissioner may reestablish the nursing facility's payment rate. The payment rate shall be established based on the nursing facility's budgeted operating costs, the receivership property related costs, and the management fee costs for the receivership period divided by the facility's estimated resident days for the same period. The Commissioner of Health and the Commissioner shall make every effort to first facilitate the transfer of private paying residents to alternate service sites prior to the effective date of the payment rate. The cost limits and the case mix provisions in the rate setting system shall not apply during the portion of the receivership period over which the nursing facility downsizes to closure.

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G. Sale or transfer of a nursing facility in receivership after closure.

(1) Upon the subsequent sale or transfer of a nursing facility in receivership, the Commissioner must recover any amounts paid through payment rate adjustments under item F which exceed the normal cost of operating the nursing facility. Examples of costs in excess of the normal cost of operating the nursing facility include the managing agent's fee, directly identifiable costs of the managing agent, bonuses paid to employees for their continued employment during the downsizing to closure of the nursing facility, prereceivership expenditures paid by the receiver, additional professional services such as accountants, psychologists, and dietitians, and other similar costs incurred by the receiver to complete receivership. The buyer or transferee shall repay this amount to the Commissioner within 60 days after the Commissioner notifies the buyer or transferee of the obligation to repay. The buyer or transferee must also repay the private-pay resident the amount the private-pay resident paid through payment rate adjustment.

(2) If a nursing facility with payment rates subject to item F, subitem (1) is later sold while the nursing facility is in receivership, the payment rates in effect prior to the receivership shall be the new owner's payment rates. Those payment rates shall continue to be in effect until the rate year following the reporting period ending on September 30 for the new owner. The reporting period shall, whenever possible, be at least five consecutive months. If the reporting period is less than five months but more than three months, the nursing facility's resident days for the last two months of the reporting period must be annualized over the reporting period for the purpose of computing the payment rate for the rate year following the reporting period.

Upon the subsequent sale or transfer of the nursing facility, the department may recover amounts paid through payment rate adjustments under this section. The buyer or transferee will repay this amount to the department within 60 days after the department notifies the buyer or transferee of the obligation to repay. The buyer or transferee must also repay the private-pay resident the amount the private-pay resident paid through payment rate adjustment.

SECTION 19.050 Medicare upper payment limit rate adjustment. In the event that the aggregate payment rates determined under this plan exceed the Medicare upper payment limit established at 42 CFR § 447.272, a rate adjustment will be determined as follows:

A. Aggregate the payment rates determined under this plan.

B. Determine the Medicare upper payment limit in accordance with 42 CFR §447.272.

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C. Subtract item A from item B.

D. If item C exceeds zero, divide the amount in item C by total statewide nursing facility resident days during the rate year in which item C exceeds zero.

E. Subtract item D from the rate otherwise determined under this plan.

SECTION 19.060 Employee scholarship costs and training in English as a second language (ESL).

A. For the rate years beginning July 1, 2001 and July 1, 2002, the Department will provide to each nursing facility reimbursed pursuant to Sections 1.000 to 20.000 or pursuant to Section 21.000 a scholarship per diem of .25 to the total operating payment rate to be used for employee scholarships and to provide job-related training in ESL.

B. For rate years beginning on or after July 1, 2003, the .25 scholarship per diem is removed from the total operating payment rate, and the scholarship per diem is based on actual costs.

SECTION 19.080 Disproportionate share nursing facility payment adjustment.

A. On May 31 of each year, the Department shall pay a disproportionate share nursing facility payment adjustment after noon on that day to a nursing home that, as of January 1 of the previous year, was county-owned and operated, with the county named as licensee by the Commissioner of Health, had over 40 beds and had medical assistance occupancy in excess of 50 percent during the reporting year ending September 30, 1991. The adjustment shall be an amount equal to \$16 per calendar day multiplied by the number of beds licensed in the facility as of September 30, 1991. These payments are in addition to the total payment rate established under Section 17.000.

B. Beginning in 2002, in addition to the payment in item A, on May 31 the Department shall pay to a nursing facility described in item A a disproportionate share nursing facility payment adjustment in an amount equal to \$59.59 per calendar day multiplied by the number of beds licensed in the nursing facility on May 31, multiplied by 181 days. The provisions of item A apply.